

FAX NO.

**RECEIVED  
CENTRAL FAX CENTER**

P. 01

MAR 17 2006

[illegible]

MAR 17 2006

Doc Code: FIRS-3288

PTO/SB/G4 (10-05)

Approved for use through 07/31/2006. UMB 0661-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

FIRS-3288

First named inventor: Keith Raniere

Application No.: 10/718,960

Art Unit: 3735

Filed: 11/21/2003

Examiner: Lacyk, John P.

Title: SLEEP GUIDANCE SYSTEM AND RELATED METHODS

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX: (571) 273-8300NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (571) 272-3282.The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action  
by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of  
the period set for reply in the office notice or action plus any extensions of time actually obtained.

## APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications  
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

## 1. Petition fee

☒ Small entity-fee \$ 750 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

## 2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of \_\_\_\_\_ (identify type of reply):

- ☐
- has been filed previously on \_\_\_\_\_
- 
- ☐
- is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ 750.

- ☐
- has been paid previously on \_\_\_\_\_
- 
- ☐
- is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending on the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Doc Code: **FIRS-3288**

(10/2/00) (10-00)

Approved for use 07/31/2003. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.


## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

  
 \_\_\_\_\_  
 Signature  
 Arlen L. Olsen  
 \_\_\_\_\_  
 Typed or printed name  
 Schmeiser, Olsen & Watts LLP  
 \_\_\_\_\_  
 Address  
 3 Lear Jet Lane, Suite 201, Latham, NY 12110  
 \_\_\_\_\_  
 Address

March 17, 2006  
 \_\_\_\_\_  
 Date  
 37,543  
 \_\_\_\_\_  
 Registration Number, if applicable  
 (518) 220-1850  
 \_\_\_\_\_  
 Telephone Number

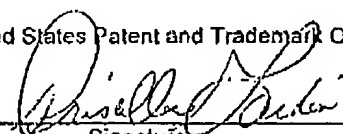
- Enclosures: ☐ Fee Payment  
☐ Reply  
☐ Terminal Disclaimer Form  
☒ Additional sheets containing statements establishing unintentional delay  
☐ Other: \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

- ☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

March 17, 2006  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Signature  
 Priscilla Gaida  
 \_\_\_\_\_  
 Type or printed name of person signing certificate

## THE UNITED STATES PATENT AND TRADEMARK OFFICE

**RECEIVED**  
**CENTRAL FAX CENTER**  
MAR. 17 2006

Applicant: Keith Ranieri

Art Unit: 3735

Serial No.: 10/718,960

Docket No.: FIRS-3288

Filed: 11/21/2003

Examiner: Lacyk, John P.

Title: **SLEEP GUIDANCE SYSTEM AND RELATED METHODS**

---

DIRECTOR OF GROUP 3700  
P.O. Box 1450  
Alexandria, VA 22313-1450

**NOTICE FOR PUBLICATION UNDER 35 U.S.C. 122(B)(iii)**  
**and PETITION for UNINTENTIONAL DELAY of NOTICE FOR PUBLICATION**  
**UNDER 35 U.S.C. 122(B)(iii)**

Dear Sir:

Applicant hereby notifies the Group Director that the above referenced patent application was filed in the Patent Cooperation Treaty, U.S. Receiving Office, on October 12, 2004. The Patent Cooperation Treaty published the application on 23 June 2005.

The instant Serial No. 10/718,960 (hereinafter '960) was filed on November 21, 2003 by Kenneth Booth of the Mesa, Arizona office of Schmeiser, Olsen & Watts LLP. At the time of filing, Mr. Booth designated a non-publication request for the Application. On October 12, 2005, the patent application was filed in the U.S. Receiving Office of the Patent and Cooperation Treaty (P.C.T.) by Arlen Olsen of the Latham, New York office of Schmeiser, Olsen & Watts LLP. Mr. Olsen was not handling the U.S. prosecution at the time of the international filing. Mr. Olsen was not aware that a non-publication request had been made for the application.

Serial No. 10/718,960

1

Shortly after the P.C.T. publication date, Mr. Booth left the employ of Schmeiser, Olsen & Watts and the U.S. prosecution was internally transferred to Mr. Olsen.

The Authorized Officer in the U.S. Receiving Office that handled the International Search Report was John Lacyk. The United States Patent Examiner in the '960 Serial Number is John Lacyk. Although the Applicant had not filed an actual notice under 35 U.S.C. 122(B)(iii), the Director had received constructive notice that an International Application was filed by reason of the fact that the Authorized Officer and the United States Examiner were the same individual. The statute, 35 U.S.C. 122(B)(iii), does not specify "actual" notice.

The International Application and the U.S. Patent Application are identical in disclosure. The public has had access to the disclosure of the subject matter of U.S. Patent application '960 by reason of the fact that the P.C.T. application WO 2005/0055802 (hereinafter '802) was published on or about the same time that the U.S. Patent application would have been published. The '802 P.C.T. application claimed U.S. Serial Number '960 as its priority date. U.S. Serial No. '960 was published on the face '802 application. The public has had access to the file history of U.S. Serial No. '960 since on or about June 23, 2005 under 37 CFR 1.14(a)(1)(v) which states:

*Unpublished pending applications (including provisional applications) whose benefit is claimed. A copy of the file contents of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(h)), if the benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2). A copy of the application-as-filed, or a specific document in the file of the pending application may also be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(h)). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (h) of this section. (Emphasis supplied).*

Serial No. 10/718,960

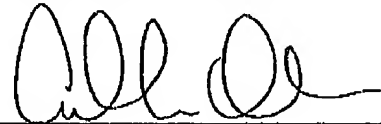
2

Applicant's representative first became aware of the non-publication request on the date of this petition while preparing to file National Patent application filings, claiming the priority of P.C.T. application '802 and U.S. Serial Number '960.

Applicant earnestly solicits acceptance of this unintentionally delayed notice and requests publication of the '802 application. Applicant states: "That the entire delay in filing the required notice from the due date until the filing of a grantable petition pursuant to this paragraph was unintentional."

The Director is hereby authorized to charge and/or credit Deposit Account 19-0513.

Respectfully Submitted,



Date: 3-13-2006

Arlen L. Olsen

Registration No. 37,543

Schmeiser, Olsen & Watts  
3 Lear Jet Lane, Suite 201  
Ithaca, New York 14850  
(518) 220-1850

Serial No. 10/718,960

3